

03-R-1477

**A RESOLUTION BY COUNCILMEMBER CLAIR MULLER  
AS SUBSTITUTED BY**

**CITY UTILITIES COMMITTEE**

**A RESOLUTION TO AUTHORIZE PAYMENT OF STIPULATED PENALTIES IMPOSED BY THE ENVIRONMENTAL PROTECTION DIVISION OF THE DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF GEORGIA (EPD) IN THE AMOUNT OF FIFTEEN THOUSAND THREE HUNDRED DOLLARS AND 00/100 (\$15,300.00) AS STIPULATED PENALTIES FOR VIOLATIONS OF THE GEORGIA WATER QUALITY CONTROL ACT ON FEBRUARY 18, 2003; MAY 2, 2003; JUNE 18, 2003; AND JULY 1, 2003; TO IDENTIFY THE SOURCE OF FUNDING; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City has experienced a violation of Georgia Water Control Act as set out in Exhibit "A" hereto; and

**WHEREAS**, on February 18, 2003 an unpermitted discharge of white slurry water entered a tributary of the North Fork of Peachtree Creek; and

**WHEREAS**, on May 2, 2003 the City did not report to EPD a collection composite sample as required by the NPDES Permit Number GA0036871; and

**WHEREAS**, on June 18, 2003 the City experienced an unpermitted discharge from the collection system of approximately 104,000 gallons of raw sewage to Nancy Creek at Broadland Road at Northside Drive; and

**WHEREAS**, on July 1, 2003 the City experienced an unpermitted discharge from the collection system of approximately 106,525 gallons of raw sewage to Nancy Creek at Broadland Road at Northside Drive; and

**WHEREAS**, on July 1, 2003 the City experienced an unpermitted discharge from the collection system of approximately 170,875 gallons of raw sewage to Nancy Creek at 1225 East Beechwood Drive; and

**WHEREAS**, the Department of Watershed Management of the City does not dispute the fact these violations of the Georgia Water Quality Control Act did occur; and

**WHEREAS**, the payment to EPD of this assessment by the City does not constitute a finding or adjudication, is not to be evidence of a violation of state or federal laws by the

City, nor does the City by its consent agree to any violations of state or federal laws or admit any liability to any third party or parties; and

**WHEREAS**, funds for this purpose are available in account number 2J01 529017 Q30001; and

**WHEREAS**, it is deemed to be in the interest of the City to accept the proposed expedited enforcement compliance order and to pay the incident assessments to them.

**NOW, THEREFORE, BE AND IT IS RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, as follows:**

**Section One:** That the Chief Financial Officer of the City is authorized to issue a check in the amounts of Fifteen Thousand Three Hundred Dollars and 00/100 (\$15,300.00) payable to the **State of Georgia** as penalties imposed pursuant to the Expedited Enforcement Compliance Order at the discretion of the Environmental Protection Division of the Department of Natural Resources of the State of Georgia; and

**Section Two:** That the said payments be chargeable to Account Number 2J01 529017 Q30001.

## **EXHIBIT A**

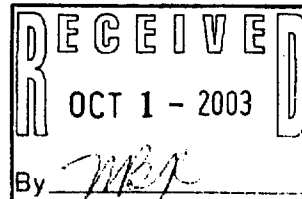
EXHIBIT A

**Georgia Department of Natural Resources**

Environmental Protection Division, Water Protection Branch  
4220 International Parkway, Suite 101, Atlanta, Georgia 30354  
Permitting, Compliance and Enforcement Program  
404/362-2680  
FAX: 404/362-2691

September 23, 2003

Mr. Rob Hunter, Deputy Commissioner  
City of Atlanta  
Department of Watershed Management  
Suite 5400, City Hall South  
55 Trinity Avenue SW  
Atlanta, GA 30335-3029



RE: Proposed Expedited Enforcement  
Compliance Order (EECO)  
Clear Creek CSO Facility  
Permit No. GA0036871  
Unpermitted discharges

Dear Mr. Hunter:

On February 18, 2003, representatives from the United States Environmental Protection Agency (EPA), the Georgia Environmental Protection Division (EPD) and the City of Atlanta (City) met at the site of the Indian Creek Relief Sewer Project to discuss the status of the construction project. During the inspection of a section of the site parallel to Lenox Road, EPD documented an unpermitted discharge of white slurry water entering a tributary to the North Fork of Peachtree Creek. The same white slurry was also visible in the construction shaft associated with the slurry boring machine. The City has since reported that the white slurry was bentonite slurry used for the construction activity associated with the Indian Creek Relief Sewer Project. According to the City's report, the bentonite slurry leaked into a nearby storm drain and was subsequently washed into Waters of the State.

In addition, a review of EPD files indicates that the City has reported not collecting composite samples at the Clear Creek Combined Sewer Overflow Facility (CSO Facility) on May 2, 2003, as is required by the National Pollution Discharge Elimination System (NPDES) Permit No. GA0036871. The City also experienced three unpermitted discharges from its sanitary sewer system that reached the waters of the State. These discharges were:

- On June 18, 2003, the City experienced an unpermitted discharge from the collection system of approximately 104,000 gallons of raw sewage to Nancy Creek at Broadland Road at Northside Drive;

## EXHIBIT A

Mr. Rob Hunter, Deputy Commissioner

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- On July 1, 2003, the City experienced an unpermitted discharge from the collection system of approximately 106,525 gallons of raw sewage to Nancy Creek at Broadland Road at Northside Drive; and
- On July 1, 2003, the City experienced an unpermitted discharge from the collection system of approximately 170,875 gallons of raw sewage to Nancy Creek at 1225 East Beechwood Drive.

The non-collection of composite samples and the documented unpermitted discharges are violations of the Georgia Rules and Regulations for Water Quality Control and the NPDES Permit. EPD is offering to resolve and settle these non-compliance issues through the enclosed "Expedited Enforcement Compliance Order and Settlement Agreement" (Order).

The order contains the following conditions:

1. Submit a monetary settlement of \$15,300.00.
2. Continue the stream sampling program for the major spills occurring on June 18, 2003 and July 1, 2003.
3. Submit a written Standard Operating Procedure (SOP) and schedule for routine inspection and maintenance of all sampling equipment and related apparatuses at monitoring stations for CSO Facilities.
4. Submit a written SOP for ensuring the City's contractors perform routine inspection and maintenance of all equipment and related apparatuses used to complete sewer collection and transmission system projects during construction activity.

In accordance with Chapter 391-1-3 of the Public Participation in Enforcement of Environmental Statutes Rule, EPD plans to issue public notice on this Order once the Order has been signed and returned by the City. After consideration of any comments received during the 30-day comment period, EPD will present to the City an executed Order or an Order with modifications based upon comments received pursuant to the public notice. In the event that no changes are made to the proposed Order previously forwarded to the City, the City will be responsible for returning the settlement amount to EPD in the form of a check for \$15,300.00, made payable to the Georgia Department of Natural Resources, within 30 days of the execution date of the Order. If you choose not to accept the terms of this Order, EPD may choose to address this matter through other formal enforcement methods.

**EXHIBIT A**

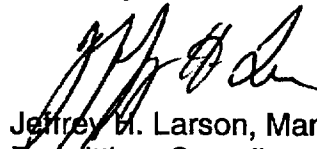
Mr. Rob Hunter, Deputy Commissioner

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EPD considers this settlement to be a reasonable resolution to this issue. We urge your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Larson", is written over the printed name.

Jeffrey M. Larson, Manager  
Permitting, Compliance and Enforcement Program

JHL/elw

Attachment

# EXHIBIT A

GEORGIA ENVIRONMENTAL PROTECTION DIVISION  
PERMITTING, COMPLIANCE, AND ENFORCEMENT PROGRAM  
4220 INTERNATIONAL PARKWAY, SUITE 101  
ATLANTA, GEORGIA 30354

## EXPEDITED ENFORCEMENT COMPLIANCE ORDER AND SETTLEMENT AGREEMENT

### PART I: COMPLIANCE ORDER

Permit No.: GA0036871

Clear Creek Combined Sewer Overflow Facility  
(Name of Facility)

Name of Owner, Operator, or Responsible

Official: Mr. Rob Hunter, Deputy Commissioner

Department of Watershed Management

City of Atlanta  
(Address)

55 Trinity Avenue S. W., Suite 5400 City Hall South

Atlanta, Georgia 30335-3029

The Environmental Protection Division (EPD) documented the City of Atlanta (City) experiencing one unpermitted discharge of bentonite slurry that entered the waters of the State (tributary to North Fork of Peachtree Creek) on February 18, 2003. EPD is also aware of the fact that the City experienced three unpermitted discharges of greater than 100,000 gallons of raw sewage that entered the waters of the State (Nancy Creek) occurring on June 18, 2003, and July 1, 2003. Also, the City did not collect composite samples on May 2, 2003 at the Clear Creek Combined Sewer Overflow Facility (CSO Facility) in accordance with the NPDES Permit. Part II.B.1.b of the NPDES Permit states the discharge from a CSO point shall be monitored by a composite sample from the start of the overflow until the overflow stops. The unpermitted discharges to the waters of the State and failure to collect composite samples are violations of your NPDES Permits, Chapter 391-3-6. of the Georgia Rules and Regulations for Water Quality Control, and Title 12, Chapter 5 of the Official Code of Georgia Annotated (Code). The following violations noted, in accordance to section 12-5-52. of the Code and its corresponding settlement amount, are listed below:

391-3-6-.06(5)(c) [12-5-52(a)], Settlement \$ 7,000.00

Nature of Violation: 1 unpermitted discharge of white slurry water to the waters of the State (tributary to North Fork of Peachtree Creek) occurring on February 18, 2003 from the construction site for the Indian Creek Sewer Relief project off Lenox Road.

391-3-6-.06(4)(a) [12-5-52(a)], Settlement \$ 2,500.00

Nature of Violation: 1 unpermitted discharge of approximately 104,000 gallons of raw sewage to the waters of the State (Nancy Creek) occurring on June 18, 2003 at Broadland Road and Northside Drive.

391-3-6-.06(4)(a) [12-5-52(a)], Settlement \$ 2,500.00

Nature of Violation: 1 unpermitted discharge of approximately 106,525 gallons of raw sewage to the waters of the State (Nancy Creek) occurring on July 1, 2003 at Broadland Road and Northside Drive.

391-3-6-.06(4)(a) [12-5-52(a)], Settlement \$ 2,500.00

Nature of Violation: 1 unpermitted discharge of approximately 170,875 gallons of raw sewage to the waters of the State (Nancy Creek) occurring on July 1, 2003 at 1225 E. Beechwood Drive.

391-3-6-.06(4)(a) [12-5-52(a)], Settlement \$ 800.00

Nature of Violation: non collection of composite sample in accordance with the NPDES Permit at the Clear Creek CSO Facility on May 2, 2003.

**TOTAL SETTLEMENT AMOUNT \$15,300.00**

The City of Atlanta is hereby ordered to correct the violation and pay the settlement amount.

This Compliance Order is issued solely with reference to the Settlement Agreement in Part II of this form. If the Settlement Agreement in Part II is not returned in correct form by the City of Atlanta within 30 days of receipt, this Compliance Order can be withdrawn without prejudice to EPD's ability to file additional enforcement actions for the above violation or any other violations.

### Part II: SETTLEMENT AGREEMENT

The Georgia Environmental Protection Division (EPD) offers this Settlement Agreement as an expedited enforcement procedure in order to settle the violation listed in the Compliance Order in Part I of this form subject to the following terms and conditions:

The City of Atlanta, by signing below, certifies under penalty of law that: a) the information submitted in this and all attached documents has been personally examined and that the City of Atlanta is familiar with the information; b) the **CITED VIOLATIONS WILL BE CORRECTED**; c) continue stream sampling program for the three major spills occurring on June 18, 2003 and July 1, 2003, and submit sampling data to EPD by the 15<sup>th</sup> day of the month following the sampling period as described in the City's approved Emergency Response Plan; d) submit to EPD within 30 days of the execution date of the Order for review a written standard operating procedure and schedule for routine inspection and maintenance of all sampling equipment and related apparatuses at the monitoring stations for the CSO Facilities; e) submit to EPD within 30 days of the execution date of the Order for review a written standard operating procedure for ensuring the City's contractors are performing routine inspection and maintenance of all equipment and related apparatuses used to complete sewer collection and transmission system projects during construction; and f) payment of the settlement amount in the form of a check made payable to the Department of Natural Resources for \$15,300 will be remitted within 30 days of the execution of the Order.

Upon EPD final approval of this Settlement Agreement, EPD will take no further action against the City of Atlanta for the specific violations described in this Compliance Order. EPD does not waive any enforcement action by EPD, the State, or any local agencies for any past, present or future violations of the Water Quality Control Rules. This Order does not relieve the City of Atlanta of any obligations or requirements of the Permit.

This Settlement Agreement is binding on EPD and the City of Atlanta once it is signed below. This Settlement Agreement is not negotiable and is effective upon EPD's final approval below. Upon final approval, EPD shall mail a copy of the approved Settlement Agreement to the City of Atlanta signing below.

Final approval of the Settlement Agreement is in the sole discretion of the Director of EPD, or authorized delegate.

BY (print name):

TITLE:

SIGNATURE:

DATE:

FINAL ORDER BY EPD this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

David M. Word, Assistant Director

COMPLIANCE ORDER NO: